

applicant in an economic sense so as to avoid issuing a patent?

The Rejection Claims As "Lacking Utility" Is Traversed

The rejection of section 4 of the current Office action is rather difficult to understand in view of his statement on page 39 of this action "...this production of "excess heat" is considered to as being the applicant's specific utility." Since heat is required for all sorts of purposes in the present industrial society in the US the Applicant fails to comprehend the logic of the claims in this case being rejected as lacking utility. Therefor this rejection is traversed.

In case the quoted statement was made in error or as a part of the use of an "eclectic", improper anti any application related to the generic topic of cold fusion examination under 35 USC 131 conducted pursuant to the SAW or similar policy a previously discussed it should be noted that the dissertations and theses indicated in the preceding discussion all demonstrate that the invention as set forth broadly in claims 13 and 20 does "work" to produce excess heat and transformations. The state university where the work set forth in these documents was performed carefully examined ther research recorded in these dissertations and theses and simply would not have issued the noted advanced degrees if this work was flawed..

In connection with the issue as to the operative character of the claimed subject matter it should be noted that there is no requirement in 35 USC 101 that any invention consistently function in an intended manner. Common new drugs are patented more or less as routine matters and yet no drug is believed to be consistently operative in an intended manner for its intended purpose. In this

connection it is noted that most if not all drugs are effective as placebos and not as they are intended to function. The logic in allowing the patenting of drugs in spite of their frequent inoperative character has apparently been overlooked by the Office. Why? Is the office acting pursuant to some non publicly disclosed policy instituting different standards for patentability of different field of invention?

There is no secret that this application pertains to a relative new, undeveloped field of technology. It is not surprising that any invention in such a field will, on occasion, not "work" in an intended manner. This type of thing has occurred in connection with the subject matter claimed. Speculation that these failures are necessarily the result of the invention lacking utility when it does operate on occasion. Part of the development of any invention requires experience in locating items interfering with the operation of the invention in one manner or another.

Thus, it is considered that one advocate of the claimed subject matter found that he had encountered problems in practicing the invention as a result of contamination of an electrode and the consequences of the presence of an impurity. Problems such as this are to be expected with any new significant development. If no patent should ever issue on a new development which was burdened by operative or related complications society would be deprived of the motive to investigate and develop new products and processes.

The Rejections Set Forth In Sections 7 to 12, Inclusive Are Traversed

It is considered proper to discuss all of the rejections of sections 7 to 12 of the current Office action together since they are all based upon a is a single Pons

et al document or Fleischmann et al taken either alone or in any of a series of combinations. All of these rejections are considered to be a part of the campaign against the issuance of patents on subject matters on the SAW or a similar list of subjects. As indicated by the preceding paragraph this effort is believed to even extend to the economic level of making things so complex and expensive for the applicant that he will give up any effort to obtain the patent protection to which he is entitled.

That the Office is doing this in the present case is believed to be evidenced by the series of rejections essentially based upon a single reference - the Pons et al publication cited. There are several reasons as to why these rejections are in error. The first of these is that the F&P invention as set forth in the primary references applied is not considered to be an invention as this term is used in the US Patent Law since as pointed out in the Wikipedia document submitted herewith. There is and apparently always has been an apparently valid belief that the particular species of alkaline cold fusion disclosed in this article "works" or is operative.

The wording of section 2 of the current Office action seems to indicate or suggest that the Examiner shares the view the Pons et al species of cold fusion is and was inoperative. The fact that in spite of the extensive work done trying to establish the utility of the P&F concepts as discussed in the precise paper applied in the rejections discussed in the current part of this document there has been no known commercial utilization of these concepts. This evidences that these concepts were inoperative or invalid. There is much that tends to establish the validity of this point. Judging by the content of the current Office action the

Examiner shares the view that P&F did not have or achieve an invention in the field of cold fusion.

If this is the case there is no apparent reason as to why the rejections on the applied references is anticipatory to the claims as now presented. This is particularly the case since it appears that F&P abandoned their alkaline species of cold fusion. Presumably this is now so well known to the Examiner that the Examiner can take judicial notice of their failed efforts to achieve consistent operation of their species of the generic concepts of cold fusion. He is respectfully requested to take such notice.

The Examiner's statement in the second paragraph of section 7 of the Office action that the mere existence of a publication such as the Examiner has applied in this case shows that the subject set forth in it "...was not abandoned..." is clearly in error. It is basic property law that whether or not something is abandoned by a party is a question of the party's intent. On this point the Examiner is requested to refer to authorities such as Black's Law Dictionary. The mere fact that something was published does not establish anything with respect to the rights to a possible invention as described in the publication unless there is a clear statement in the publication or elsewhere indicating an intent to abandon rights to whatever was described in the publication. Collateral facts may establish such an intent.

From this it is apparent that the affect of the cited Pons et al publication is not what the Examiner has indicated. It is apparently only a discussion of a type of process which has been considered not to be operative or to "work". Under the circumstances it can 't be considered a valid reference against the claims,

particularly when the latter are directed to a species of cold fusion which is basically different from that of the F&P concepts.

Because of the frequently discredited character of these concepts no one would be expected to derive the process claimed in claims 13 and 20 in this case from any disclosure of the F&P work such as is found in Pons et al document. Instead any such disclosure would be expected to be a clear indication to any one not to do anything falling within the discussion within the Pons et al document or any other related disclosure. In effect when considered what is considered to be common knowledge the Pons et al document is like a sign saying " Don't Try What Is Disclosed In This Document - It Will Not "Work".

Because of this no one can reasonably believe that it suggests that any one would achieve an operative process as claimed by doing what the applicant has claimed. Further there is nothing to suggest any of the various hindsight wisdom type combinations proposed by the Examiner. To be fair any combination of references must be based upon a basic suggestion in the primary reference of the combination. No such suggested is clearly indicated in those references applied in the various combination references of record.

The Rejection of Claims On Dash Et Al is Traversed

The rejection set forth in Section 13 of the current Office action is respectfully traversed. This rejection is not as clearly delineated as one might expect and is rather puzzling, particularly since the Examiner has not chosen to delineate his position in connection with this rejection. This will be easily apparent from a view of the abbreviated character of this rejection.

The rejection indicates that it is made under 35 USC 102(b) which says nothing about the Doctrine of Continuity governing what is the effective filing date of the present application. The Manual section 201.11 cited in the rejection was consulted using a computer. This resulted in a 22 page printout in which its contents were set out in closely spaced comparatively fine print. A review of this document revealed nothing particularly significant relative to 35 USC 102. Under the circumstances in responding to this rejection the applicant can only speculate as to the Examiner's logic in making it.

The Applicant's best guess is that the Examiner intended this rejection as a type of res judicata rejection. Any such rejection would be improper since the prior case involved a different fact situation than is currently present with respect to the pending application. If this rejection is intended to be based on the filing date of the application involved in an earlier application this rejection would seem improper. This is because the issues of the sufficiency of a disclosure and of the applicability of 35 USC 120 are distinctly different. It would seem that this is not a case involving priority under 35 USC 120 since this code section is not mentioned in the pending Office action.

Because this specific rejection is not clear it is respectfully traversed. Possibly something got left out of a draft in preparing the current Office action. It is equally possible that the Examiner may have thought that complete content of this rejection would be apparent. Unfortunately it isn't. Of course the possibility that this particular rejection was sent out in the form in which appears was a part of the anti campaign in accordance with SAW or similar policy discussed earlier in this response to discourage by any means possible applicants from obtaining

protection which might be detrimental to the Office's reputation. The present transversal is in part submitted because it relates to the fact that this application has not been properly examined in accordance with the requirements of 35 USC 131.

Conclusion

There is no reason for the Office to refuse patent applications on the non statutory grounds that they might cause the Office some embarrassment or ridicule and that this might lead to undesired Congressional attitudes or similar consequences. Similarly there is no reason for the Office to withhold a fair, impartial examination on applications in fields which might result in the noted consequences. Consistently in the past the Office has issued patents which have often caused its conduct to be questioned. Why should there be any change in this past procedure at this time. Liberality in the grant of patents in the past has presumably resulted in more benefit to US society than the refusal of patents on selected topics.

The proceedings relative to the subject matter of the present application gives the impression that the subject matter of this case is one of those topics and that patent protection on it has been refused by "throwing the book" in any and every manner reasonably possible. This has included not examining the application in a fair manner under 35 USC 131 and by ignoring the realities of a multitude of factors and by not fairly considering that citations and decisions on a species of the generic concept of cold fusion are not meaningful with respect to the patentability of a distinctly different species under this concept.

In view of all that has been stated a favorable and fair reconsideration of tis

application is requested. If, as it is reconsidered, the Examiner has any difficulty in locating the dissertations and theses discussed please advise the applicant in an effort to make these documents available so the Examiner can study them. It is believed that the fact that theses and other items favorable to the applicant have been considered by the Office should be indicated on the record.

Respectfully submitted-

Aug. 23, 2006

A handwritten signature in cursive script, appearing to read "John Dash", written in black ink.

John Dash, Applicant, on behalf of himself and the assignee of the noted application.